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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,396	10/30/2003	Derek Metcalf	38949/293059	3301
23370	7590	01/06/2006		
JOHN S. PRATT, ESQ KILPATRICK STOCKTON, LLP 1100 PEACHTREE STREET ATLANTA, GA 30309			EXAMINER NOVOSAD, JENNIFER ELEANORE	
			ART UNIT	PAPER NUMBER
			3634	

DATE MAILED: 01/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/699,396	Applicant(s) METCALF, DEREK	
	Examiner Jennifer E. Novosad	Art Unit 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 October 2003 and 31 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 8-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/01/04; 5/20/05</u> | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Election/Restriction

Applicant's election without traverse of Group I, i.e., claims 1-7, in the reply filed on October 31, 2005 is acknowledged.

Thus, claims 8-15 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Claim Objections

Claims 1 and 3 are objected to because of the following informalities:

In line 13 of claim 1, it is suggested that --either-- be inserted before "against".

It appears that "one" (after "inside") in line 14 of claim 1 should be deleted.

In line 2 of claim 3, it is suggested that --each-- be inserted before "comprise".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 2, and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Claim 1 recites the limitation "the receiving structure" in line 15. There is insufficient antecedent basis for this limitation in the claim. It appears that "the receiving structure" should be changed to --vertical member--.

Claim 2 recites the limitations (a) "the relative positioning" in line 1 and (b) the angle of forward slope" in line 2. There is insufficient antecedent basis for these limitations in the claim.

Claim 6 is rendered indefinite since the claim appears to be inaccurate and/or misdescriptive, especially in view of the drawings. *In particular*, it appears that several wires have been utilized to construct the shelf, rails and pins. Thus, it is unclear how these elements can comprise a "single" wire structure.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,583,648 (Buffington et al. '648) in view of U.S. Patent No. 5,205,421 (Bustos '421).

Buffington et al. '648 disclose an adjustable cantilevered shelf unit comprising a support frame comprising two vertical members (12) comprising a plurality of evenly spaced apart openings (14) on a front receiving surface thereon and a generally planar wire shelf mounted to the vertical members (12); the shelf (10) comprising a wire mounting rail (40) extending from each side of the shelf and comprising a wire top rail (48) and a wire bottom rail (46); an upper

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mounting pin (to the right of 82 in the middle and bottom of Figure 4) extends downwardly from the rear edge of the top rails (48) and a lower mounting pin (in between 86 and 88 at the middle and bottom of Figure 4) extending downwardly from the rear edge of the bottom rails (46) whereby the upper and lower pins are offset from one another; the shelf (10) is mountable to the display frame (including 12) by inserting the upper pins in first openings (14) of the receiving surface and the lower pins are selectively positionable either against the front receiving surface (see bottom of Figure 4) of the vertical member (12) causing the shelf (10) to be oriented in a *substantially* horizontal orientation or inside second openings of the front surface causing the shelf (10) to be oriented in a forward sloping orientation (see Figure 10); *with respect to claim 3*, each pin is formed by a single bend; *with respect to claim 4*, the shelf (10) has a upwardly extending bend (at 36 in Figure 1) disposed perpendicularly to the shelf; and *with respect to claim 7*, the top rail is considered to include the curved portion (at 50 in Figure 1) and the bottom rail is considered to include the portion of 46 between 58 and the rear edge of 46, and thus the top rail is longer than the bottom rail.

The claims differ from Buffington et al. '648 in requiring the frame to have a base and a horizontal member extending between two vertical members (claim 1).

Bustos '421 teaches a cantilevered shelf unit comprising a shelf (1) and a unit comprising two vertical members (6a) having openings therein (79), a horizontal member (see Figure 1), and a base (5).

It therefore would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the nit of Buffington et al. '648 with a base and horizontal member, as taught by Bustos '421, for increased support and stability of the unit.

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Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buffington et al. '648 in view of Bustos '421 as applied to claims 1-4 and 7 above, and further in view of U.S. Patent No. 5,641,083 (Metcalf '083).

The claim differs from the above references in requiring: (a) the front edge of the shelf to comprise a frame for receiving indicia (claim 5); and (b) the shelf, rails, and pins to comprise a wire structure (claim 6).

With respect to (a), Metcalf '083 teaches a frame (at 44) on a front edge of a shelf (10) for displaying indicia.

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the shelf with a frame for displaying indicia, as taught by Metcalf '083, for ease in use to the consumer since information about items stored therein can be displayed.

With respect to (b), Metcalf '083 teaches the use of wire for pins (52 and 53) extending from the shelf.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have fabricated the pins of Buffington et al. '648 utilizing wire for ease in economy and manufacture.

Conclusion

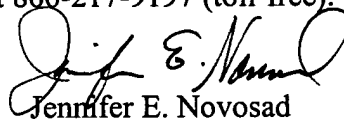
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is 571-272-6832.

The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard E. Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jennifer E. Novosad
Primary Examiner
Art Unit 3634

January 4, 2006